

MCPB
Item # 1 & 2
07/07/05**MEMORANDUM:**

TO: Montgomery County Planning Board

FROM: Rose Krasnow, Chief, Development Review Division *R&K*

SUBJECT: **RECONSIDERATION of Alleged Height Violations**
CONSIDERATION of Alleged Setback Violations

PROJECT NAME: Clarksburg Town Center

REVIEW BASIS: Div. 59-D-3.6 of the Montgomery County Zoning Ordinance

Case #: 8-98001 & amendments and 8-02014 & amendments

ZONE: RMX-2

LOCATION: In the northeastern quadrant of the intersection of Stringtown Road and Frederick Ave (MD RT. 355), Clarksburg

MASTER PLAN: Clarksburg and Vicinity Master Plan

HEARING DATE: July 7, 2005

STAFF RECOMMENDATION:

Finding of site plan violation for all buildings that exceed the site plan signature set height restrictions of 35 feet for single-family units and 45 feet for multi-family buildings.

Finding that front setbacks do not comply with site plan approvals.

PROCEDURAL PREFACE:

These two items have been noticed as public hearings during which the Board will consider whether there have been site plan violations with respect to certain building heights and

certain building setbacks. Although other issues may be raised with respect to the overall development of Clarksburg Town Center, the Board's decision will be based solely on the issue of the merits of these two alleged violations. If the Board does not find any violations, then its consideration of this matter is concluded. If the Board does find violations, then it will proceed immediately to consider any citations and/or corrective action that it may elect to impose. Based on staff's recommendations with respect to the merits of the alleged violations, staff has prepared a separate staff report recommending Board action in the event it supports staff's recommendations on the height and setback issues.

I. Background Regarding the Complaint

In the summer of 2004, a group known as the Clarksburg Town Center Advisory Committee (CTCAC) was formed by residents of the Town Center who were concerned that Newland Communities, the developer of the Clarksburg Town Center project, might not be adhering to the vision and intent of the Clarksburg Master Plan or to the Project Plan guidelines. The residents first notified the Commission of their concerns in a letter to Derick Berlage, dated August 16, 2004 (Attachment 1). The issue raised in the original letter was that Newland had proposed significant changes to the retail phase (Phase III) of the development. Soon afterward, the issue of height was also raised. Specifically, CTCAC voiced concern that a multi-family condominium building constructed by Bozzuto (Building 3) appeared to violate the 4-story (45 feet) height limit for residential structures specified in the Project Plan. Over the course of the next several months, staff corresponded with the CTCAC group and met with them in person to discuss their concerns, but the group was not satisfied with the responses received. Most of these discussions centered on the height requirement, because the amendment for the Phase III retail portion of Clarksburg Town Center that first prompted their concerns had not yet been submitted to Park & Planning for review.

On January 25, 2005, CTCAC officially requested a violation hearing with respect to height. (See Attachment 2, noting that the date on the letter mistakenly says January 25, 2004, instead of 2005.) The hearing was held on April 14th and lasted approximately three hours. At the conclusion the Board voted 4 -1 (with Commissioner Wellington dissenting) to approve a motion that no violation had occurred with respect to height. However, in a letter dated April 22, 2005, CTCAC formally requested a reconsideration of that decision, pursuant to Section 11 of *the Rules of Procedure for the Montgomery County Planning Board*. As grounds for reconsideration, CTCAC contended that the May 13, 1999 Site Plan Enforcement Agreement, which had been signed by both the Developer and the Developer's attorney, clearly demonstrated that the entirety of Clarksburg Town Center Phase I (#8-98001) was subject to the Signature Set and any amendments thereto, and that the Signature Set in question established height restrictions of 35' for single family residences and 45' for multi-family units. Moreover, CTCAC maintained that a member of staff had altered the data table included in that Signature Set to indicate that the height limits specified in feet had been changed to show stories only and that this staff member had misled the Board at the hearing regarding that alteration.

Subsequent to receiving the request for reconsideration, it was learned that said staff member had indeed altered the data table and that this alteration was made, not soon after approval of the Site Plan to bring it into seeming conformance with the staff report and opinion,

as had been stated by said staff member at the first hearing, but in the fall of 2004, after the issue of potential height violations had been raised by CTCAC. For these reasons, the Planning Commission voted unanimously on May 5, 2005 to reconsider the height violation issue.

The issue of setback violations arose in the winter of 2005 when DPS stopped construction on a 2 over 2 building which did not meet the side setback requirement. Further investigation found many complicating issues with respect to the setback requirements, and, consequently, this matter was not brought to the Board simultaneously with the height issue in April. The setback issue is fully analyzed in this report.

II. Summary of Staff Findings on Height and Setback Issues

It has been clearly established that many of the buildings in Clarksburg Town Center exceed the height limitations of 35 feet for single-family attached and detached homes and 45 feet for multi-family units that are clearly set forth in the Signature Set¹ and incorporated by reference into the Site Plan Enforcement Agreement (SPEA).² These limitations appear even though both of these documents were prepared after the Planning Board had approved the Site Plan, which did not impose a height limitation in the Opinion at all, but did incorporate by reference the staff report, which contains a height limit of four stories, with no limitation in terms of feet.³

What is unclear is why the height limitations set forth in the Site Plan Enforcement Agreement are more restrictive than the standard set in Site Plan Opinion. One could argue that the data table that appeared as part of the original project plan submission that came into MNCPPC in 1994 was inadvertently carried forward from project plan through site plan. Regardless, Staff views the Site Plan Enforcement Agreement as a legally binding document, and the standards contained therein must be controlling unless and until amended. Consequently, staff's recommendations are as follows:

With respect to the multifamily buildings, staff recommends that the Board find that structures built taller than the 45-foot restriction contained in the Signature Set and incorporated by reference into the Site Plan Enforcement Agreement constitute a site plan violation. Bozzuto has built or plans to build all of the multi-family buildings. Should the Board

¹ The "Signature Set" is the set of engineered drawings that show the multiple details of a project including, but not limited to, the landscaping and streetscaping plans, the amenity and recreational elements required in the plan, and the MPDU locations and unit types. It also includes a "project data table," which reflects dimensions such as height limitations, setbacks, *etc.*

² The Site Plan Enforcement Agreement is a contract signed by an applicant and the Planning Board (by its designee, the Chief of Development Review Division) that obligates the applicant, its successors and assigns to build the project in accordance with, among other things, the Signature Set documents.

³ A review of the original Project Plan documents finds a similar situation. The Project Plan staff report and opinion speak only of a height limitation of 4-stories and 45 feet, with no mention of a 35-foot restriction (i.e. three stories, 35 feet). Yet, the approved Project Plan drawings once again show a data table that delineates both the 35 and 45 foot limits.

find a violation with respect to these buildings, staff recommends that each unit constitute a separate site plan violation.

With respect to 2 over 2's, which are actually single-family attached units, staff recommends that the Board find that structures built taller than the 35-foot restriction set forth in **the Signature Set and incorporated by reference into the Site Plan Enforcement Agreement** constitute a site plan violation. Craftstar has built or plans to build all of the 2 over 2s. Should the Board find a violation with respect to these structures, staff recommends that each unit constitute a separate site plan violation.

With respect to townhouses, staff recommends that the Board find that structures built taller than the 35-foot restriction set forth in **the Signature Set and incorporated by reference into the Site Plan Enforcement Agreement** constitute a site plan violation. The builders in question include Craftstar, NV Homes, Miller & Smith and Porten. Should the Board find a violation with respect to these structures, staff recommends that each unit constitute a separate site plan violation.

With respect to the setback issues, Staff recommends that the Board find that structures built with a front setback of less than 10 feet as required by the standards set forth in **the Signature Set and incorporated by reference into the Site Plan Enforcement Agreement** constitute a site plan violation. Again, the builders in question include Craftstar, NV Homes, Miller & Smith and Porten. Should the Board find a violation with respect to these structures, staff recommends that each unit constitute a separate site plan violation.

III. Background Regarding the Clarksburg Town Center Project

The Clarksburg Master Plan and Hyattstown Special Study Area ("Master Plan") was approved by the County Council in June of 1994. It called for the creation of a Town Center in Clarksburg, which would include the Historic District as a focal point and would be surrounded by a mix of uses, including office, residential, and retail.

In December of 1994, both a Project Plan (#9-94004) and a Preliminary Plan (#1-95042) were submitted for review by Piedmont and Clarksburg Associates, represented by Steve Klebenoff and Mark Montgomery. Using the optional method of development under RMX2 zoning, the plan envisioned what is now known as a neo-traditional community and called for the construction of a maximum of 1300 residential units, 100,000 square feet of office, and 150,000 square feet of retail, to be constructed in phases. The Project Plan was approved in June of 1995. The Preliminary Plan was approved in March of 1996.⁴

The first site plan for Phase One (#8-98001) was not approved until March 3, 1998. Although Piedmont and Clarksburg Associates submitted the Phase One Site Plan and sold the

⁴ The Preliminary Plan had a validity period of nine years, which expired on March 26, 2005. However, prior to the expiration date, the applicants submitted a request for an extension. The issues regarding the extension request will be the subject of a public hearing on July 21, 2005.

first lots to builders for the construction of single-family dwellings, the remainder of Phase One was taken over by a new developer, Terrabrooke, in February of 2000. Terrabrooke submitted the site plan for Phase II, which was approved on June 17, 2002. In October of 2003, Newland Communities became the Master developer for Clarksburg Town Center. At this time, approximately 725 units have been built or are under construction in Phase I and II of the project.⁵

IV. Assessment of Height Standards

A. Master Plan

It is important to begin by addressing the issue of height in the Town Center as it relates to the Master Plan. The complainants have stated on several occasions that the height in feet was specified in the Project Plan to ensure that the development would be in compliance with the intent of the Master Plan. It is the opinion of staff, however, that the Master Plan does not offer such specific guidance with respect to height. Clearly, the Master Plan anticipated the Town Center development. It states (p. 26) "The Plan proposes a transit-oriented, multi-use Town Center which is compatible with the scale and character of the Clarksburg Historic District." It goes on to say that this plan "proposes a buffer concept around the historic district to protect its character." However, on Page 46, it simply states "All apartment buildings in the future Town Center will be four stories or less except within walking distance of the transit stop, where a building height of six to eight stories may be allowed if Master Plan Recommendations concerning compatibility with the historic district can be achieved." In other words, not only is height *not* specified in feet in the Master Plan but also there is an implication that although four stories is the standard, taller buildings of six to eight stories could be deemed acceptable under certain circumstances.

The complainants have also stated that the reason the Master Plan was specific with respect to height was to protect the character of the Historic District. The Master Plan to the relationship between the Town Center District and the Historic District. For example:

"The relationship between the Clarksburg Historic District and the new neighborhoods is a sensitive one. The historic district must retain its character while blending smoothly with the new neighborhoods that will be developed around it."

The idea of isolating the historic district from the new development defeats the purpose of having "new" Clarksburg grow. It is equally important, however, that the historic district be integrated into the new Town Center and that the character and identity of the historic district be maintained while allowing for appropriate growth and change." (P. 48)

*Confusing use/double use
of word approval*



⁵ Under the current approvals an additional 464 units can be built, including 170 in Phase III, which has not yet been approved. This would be a total of 1189 units, which are considerably fewer than the 1300 units approved.

The Master Plan then specifies buffer areas near the Historic District that will "help to assure a sympathetic relationship between "old" and "new." One of the buffer zones (an area of approximately 550 feet) is identified as an area appropriate for single-family detached housing with a maximum height of two stories, while a second buffer (also an area of approximately 550 feet) is shown as appropriate for housing with a maximum height of three stories. Outside of these two areas, one must assume that the four story height limit applies.

Staff, therefore, has made a finding that a height specification of "four stories" with no limitation in feet conforms with the Master Plan recommendations. However, it is important to note that height was a much discussed issue during the two years of debate leading up to the adoption of the Master Plan. Indeed, on 3/23/92 the Clarksburg Civic Association reached the consensus position that:

"The Town Center District should not be planned around a predetermined population. Height limits necessary to establish a small town character should be the dominant consideration. No residential development east or west of I-270 should exceed three stories in height."

On 8/10/93, CCA reaches another consensus position, stating that:

"The Town Center and Transit Corridor Districts should not be planned around a predetermined population. Height limits necessary to establish a small town character should be the dominant consideration. Six to eight story apartment buildings are inappropriate. Residential development should not exceed three to four stories."

One could, therefore, make the assumption that even though the Master Plan did not specify any height limitations in terms of feet, the applicant may have felt it wise to put such limits on their development to ease the concerns of existing Clarksburg residents.

B. Project Plan Approval

When the Project Plan (#9-94004) was submitted in 1995, it was unique in terms of its size and complexity, particularly since it proposed one of the first neo-traditional communities that staff had analyzed. Many important issues had to be resolved. Indeed, the project plan opinion lists these issues as follows: the development ceiling; transportation improvements, road dedications and construction, environmental improvements, the Park/School, historic preservation, compatibility with the Historic District, street layout, staging of amenities, landscaping, maintenance, and roadway access. Height is not identified as an issue or even discussed. Moreover, there is no height limitation in the RMX2 zone. However, the data table included in the Planning Board's opinion showed the following:

	Building Height	Required	Proposed
a.	Commercial	4 stories	4 stories (50 ft)
b.	Residential	4 stories	4 stories (45 feet)

Much has been made of the fact that the data table shows the "Required" height to be four stories, whereas the height in feet is only "Proposed." In staff's opinion, the argument that the height in feet was meant only as a suggestion is not consistent with this agency's interpretation or application of these data tables nor is it plausible. Data tables routinely show what is required in a zone; the developer then sets forth what will be provided in order to show that the standard will be met. In this instance the application could have stated "four stories" and been in compliance, but, as indicated in the above Master Plan discussion, it seems quite likely that a conscious decision was made to specify expressly that the four story requirement would be limited to 45 feet in order to appease Clarksburg residents and help assure acceptance of the plan. Therefore, staff concludes that at the time of Project Plan approval, 45 feet was the maximum height limit for residential structures.

C. Preliminary Plan Approval

The Preliminary Plan (1-95042) received approval on September 28, 1995 and the opinion was released on March 26, 1996. The opinion states that the underlying development authority was Project Plan #9-94004, and that the preliminary plan specifically includes the records from those prior hearings. Again, no mention is made of height, nor does the opinion include any sort of data table. However, it does state on p. 6 that:

"Preliminary Plan 1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan No. 9-94004. Each term, condition and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are, therefore, not automatically severable. Should any term, condition, or requirement associated with the approved plans be invalidated, then the entirety of the approved plan must be remanded to the Planning Board for further consideration."

D. Site Plan Approval

The first site plan (Phase 1, #8-98001) was not approved for another three years.⁶ The issues that had to be addressed at site plan proved even more complex. Forty-two conditions, an exceptionally large number, were made part of the site plan approval. None of the conditions dealt with height, but the staff report does make reference to height on page 12, stating, "The multifamily units are four story apartment styled buildings located at the outside block face with an internal parking lot." The data table listing development standards also shows height, but the parenthetical reference to height in feet was dropped as shown below:

	Permitted/Required	Proposed
Building height	4 stories	4 stories

⁶ Phase I was approved for a total of 75 SFD, 295 TH, and 298 multi-family units inclusive of 96 MPDU's. Although the unit mix and numbers changed during the course of several amendments, it appears that the signature set data table did not change.

If one was reading only the staff report and the related opinion (which incorporated the staff report by reference) for the Phase I Site Plan, it would be easy to conclude that over time the plan had been refined and the height requirement had become less restrictive, particularly since the more general standard of four stories was still in keeping with the Master Plan. Indeed, this was the assumption behind staff's original responses to CTCAC regarding the height issue. The current developer has also argued that one need only look to the site plan staff report and the opinion to determine that the only height requirement was "four stories" for residential. However, further analysis reveals that the Signature Set, submitted by the developer in 1998 and then reviewed and signed by MNCPPC in 1999, included a data table that was more specific than the project plan data table. It established a maximum allowable height of 35 feet for single family detached and attached units, and a maximum height of forty-five feet for multi-family units. Stories are not even shown. This same data table is referenced as part of the Site Plan Enforcement Agreement, which is yet another document that is signed by the developer or his representative and has the force of law behind it. Moreover, it is important to note that there is nothing contradictory about a height specified as four stories in the opinion but delineated as 45 feet on the Signature Set. These documents all appear to be in order, and demonstrate a specific requirement to limit the height of the buildings in feet.

At the first violation hearing, the staff member making the presentation produced another document that showed the Signature Set data table with the height in feet crossed out, and four stories written in by hand. The staff member stated that this change was made soon after the signature set was signed because the discrepancy had been discovered and it was necessary to bring the documents into conformity. Furthermore, the staff member stated that only single family homes detached homes had been built under the erroneous signature set. However, as was later learned, the signature set data table was not altered until late in 2004, long after many of the housing units of all types had been built. There is no evidence that a decision was ever made to change the height limitation of 35 feet and 45 feet to the more generic four stories, either by the Board or administratively by staff.⁷ Therefore, the conclusion stands that the site plan requirements relating to height have been violated.

The developers have argued that their building permit applications included construction plans that accurately showed the height of the proposed buildings as being higher than the 35 and 45-foot limitations on single-family and multi-family units, respectively. The developers further state that they relied on the building permits that were issued, after having been reviewed by both DPS and M-NCPPC. They use these approved permits as the basis for their position that everyone knew and agreed that the prevailing standard was simply "three stories" or "four stories."

In fact, what has come to light as a result of this investigation is that no agency has been reviewing the height of proposed buildings in developments where height limitations are not specifically set by the zoning code. MNCPPC staff has always assumed that DPS reviews building height in all projects. In response to staff's inquiries about DPS' release of building permits in this project, DPS has stated that it lacks the statutory authority to undertake any

⁷ The developers have argued that Staff administratively approved the new height pursuant to authority delegated by the Planning Board through Site Plan Condition No. 38. Staff finds no support for this conclusion.

review of building height if a project is developed under an optional method of development.⁸ DPS' stated presumption that MNCPPC staff reviews height in these specific projects is not carried through in the process, however, in that DPS sends no information to MNCPPC that indicates height (either numerically on an application form or in the form of building elevations) for MNCPPC staff to review during the building permit review process.

Even in light of this lapse in the building permit review process, staff does not concur with the conclusion that this "agency practice" resulted in a *de facto* change of the 35-foot and 45-foot height limitations in the signature set.⁹

On May 9, 2002, the Board reviewed Site Plan #8-02014 for Phase II of the Clarksburg Town Center. Approval to build 487 dwelling units (153-SFD, 202 TH's and 132 multi-family units) inclusive of 46 MPDU's, was granted on June 2, 1003. With respect to height, the Project Data Table (p.17) states the following:

	Permitted/Required	Proposed
Building height	4 stories	4 stories

Although the signature set for this phase drops the height limitation altogether, it was not signed until October 14, 2004, yet homes were sold to private citizens as early as 4/4/03, which means that construction of these units was begun in error. In trying to determine how this occurred, it was discovered that the Record Plat for Phase II referenced the Signature Set for Phase I. Before staff will sign off on a building permit, a check is made to insure that there is a signed signature set. However, the builders referenced the signature set for Phase I, and this one, of course, was signed. The MNCPPC Plan Reviewer did not realize that this was not the correct reference. He merely knew that the referenced signature set had been signed, so he proceeded to sign off on Phase II building permits. Moreover, this also means that the reviews were still based on the data table from Phase I. Technically speaking, therefore, it would appear that the height limitation in feet was still the prevailing standard, although, as mentioned earlier, MNCPPC was not checking heights.

⁸ MNCPPC has not had an opportunity to review the validity of this claim.

⁹ Staff cannot understand why *all* the builders failed to adhere to the site plan height standard. One can only assume that this came about because considerable time passed between the date of Project Plan approval and the submission of the first building permit application, and the project changed hands more than once. It is quite possible that attention was paid only to the site plan staff report and the opinion, not to the signature set or the SPEA. Permits were then submitted and approved, which only seemed to further indicate that there was no specific height limitation in feet. As a result, additional plans for taller structures were submitted, particularly given a growing demand on the part of consumers for homes with higher ceilings.

E. Issues Raised by the Community

Numerous letters, emails and phone calls have been received from residents of the Town Center, prospective purchasers, and from the Clarksburg Civic Association, but the opinions expressed differ widely. While many clearly support CTCAC's position that the builders have intentionally ignored the standards set forth for the Clarksburg Town Center and believe that the quality of their community has been compromised as a result, others express great satisfaction with their homes and their living environment. Some of this group have argued that CTCAC is an ad hoc group composed of a selective group of citizens that does not represent the entire community. However, since the developer still retains control of the project, no official homeowner association representing all of the Town Center residents has yet been established.

V. Staff's Findings

The Board approved the project plan in 1995, not long after the Master Plan was adopted. Given this proximity in time and the express Zoning Ordinance requirement that the Board review the project plan for conformance with the Master Plan, staff readily concludes that the original height limit of four stories, 45 feet approved as part of the Project Plan Opinion was deliberate and designed to implement the Master Plan's goals for this community. The Site Plan Opinion, by incorporating the Staff report, reiterated the 4-story height limitation for all residential buildings. This standard, however, is less restrictive than the data table that was included in the approved project plan drawings and the Site Plan Signature Set, which showed a height limit of 35 feet for single family detached and attached dwellings and 45 feet for multi-story structures. It is this data table that was incorporated by reference into the Site Plan Enforcement Agreement.

It is unclear as to why the Signature Set and the Site Plan Enforcement Agreement are more restrictive than the original project plan approvals, particularly given the fact that these documents are prepared and submitted by the applicant, but it has been clearly established that they are. The Site Plan Enforcement Agreement is a legally binding contract, and the standards contained therein must be considered controlling unless and until amended. The fact that numerous builders engaged in a practice of submitting building permit applications that violated the standards contained in the signature set and incorporated into the Site Plan Enforcement Agreement reflects a patent disregard for post-approval implementation documents that concerns staff greatly. Staff concludes that each structure that was built in excess of the height limitations contained in the signature set constitutes a site plan violation, and recommends that the Board find each unit in said buildings to be a violation of the site plan. Specifically, Staff finds that 433 townhouses, 26 two over twos, and 30 multi-family units are in violation of the height limits.

VI. The Setback Issue

While staff at Park and Planning were working with CTCAC in an attempt to resolve the height issue, DPS issued a stop work order on a 2 over 2 building in Clarksburg Town Center because a wall check had revealed that the structure did not meet the setback standard. Further review indicated that a large number of structures, many of which were already occupied, failed to meet the setback standard of 10 feet from any street.

A review of the relevant documents reveals the following:

The Master Plan does not set a side setback standard for Clarksburg Town Center. Rather, it states (p. 98) that a development like Clarksburg Town Center can best be "implemented through zones which allow the developer more flexibility in terms of layout and provide for more rigorous design review by the Planning Board and/or County Council." The RMX2 zone was designed to allow this flexibility and states that with respect to the setback from any street, "no minimum setback is required if in accordance with a master plan" (59-C-10.38).

The Project Plan Opinion, issued in June of 1995, includes a data table (p. 9) that says the following with respect to setbacks:

From any Street*	Required	Proposed
Commercial Bldgs	NA	0 ft. min
Residential Bldgs	NA	10 ft. min.

* No minimum setback is required if in accordance with an approved master plan.

The Site Plan shows a similar data table, but note the change in the wording of the footnote:

Min. Bldg setbacks (ft)		
From any street	Required	Proposed
Commercial bldgs	n/a	n/a - w/Phase II
Residential bldgs	n/a**	10 ft. min**

** The Planning Board reviewed this setback during the Project Plan Review and found that no setback is necessary per the approved master plan.

This wording seems to imply that the Board found, at the time of Site Plan, that no setback from the street was required, but since the 10 foot standard still appears, one has to assume that the wording of the footnote was meant to imply that the Board, in its review, recognized that no setback was required if in accordance with a master plan, but that the Board chose to establish one.

The data table on all of the documents (project plan drawings, site plan signature set, etc.) clearly shows that the setback from any street is 10 feet and that the front yard setback is 10 feet. Moreover, when a unit occupies a corner lot, DPS considers that unit to have two fronts¹⁰ so two ten foot setbacks would be required. Builders in the County are well aware of this fact. One could make the case that this ten foot setback is not appropriate in a neo-traditional community, particularly with respect to private streets that primarily serve as an access point to driveways. Had an amendment been sought, such an amendment may have been granted. However, no such change was requested. Therefore, staff has made a finding that 102 violations have occurred with respect to the front setback standard.

¹⁰ As per DPS Code Interpretation/Policy ZP0403-3: "Each corner lot has two front yards and therefore requires a front yard setback from each street."

CONCLUSION

As stated above, Staff finds that the developer and the builders did not follow the standards with respect to both height and setbacks that were set forth in the Site Plan Signature Set and incorporated by reference into the Site Plan Enforcement Agreement. Staff concludes that based on this review of the underlying approvals, and the subsequent implementing documents, that the Board should find the site plan violations described above. If the Board does find violations with respect to height and/or setbacks, staff will have another report prepared dealing with the issue of a Plan of Compliance.

Attachments*

- * The entire package of attachments will be distributed Friday, July 1, 2005.

August 16, 2004

The Honorable Derick Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

RECEIVED
1288
AUG 19 2004

Re: Proposed Changes to Project Plan for Clarksburg Town Center

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Dear Mr. Berlage:

As Co-Chairs of the Clarksburg Town Center (CTC) Advisory Committee, we are writing as the collective voice of the community to express our strong opposition to the deviations (as contained within the Site Plan proposed by the developer, Newland Communities) from the approved Project Plan #9-94004. These deviations concern the commercial and other sections of the development as reflected in the Site Plan presented by Newland Communities during the July 27, 2004 meeting with CTC residents.

As proposed by the original applicants and developer, Clarksburg Town Center Venture and Terrabrook, and approved by the Planning Board, Clarksburg Town Center is a neo-traditional community reflecting the "New Urbanism" school of community planning and design. Accordingly, it is designed and intended to provide a unique pedestrian-oriented neighborhood that allows residents to walk to the recreational, retail, civic and other facilities dictated in the Master and Project Plans previously approved by the Board. Specifically, the Town Square was designed and intended to serve as the focus of public life, with retail and commercial establishments located on the East side of the development's Main Street and Town Square. The Master Plan also gave careful consideration to protecting the character of Clarksburg's Historical District, the Gateway to the Town Square.

Clarksburg Town Center is in the RMX-2 Zone, which allows for both "standard" and "optional" methods of development. Under the "standard" method, office and retail uses are not allowed at all. Accordingly, the developer submitted and the Board approved an "optional" method of development that allowed for high-density residential units mixed with commercial uses if in accordance with the guidelines of the Master Plan, and that explicitly required certain public amenities and facilities. It appears that the developer thus could not have gotten approval for this high-density residential project without including in its application the community-oriented and pedestrian-friendly plans for the Town Center's retail and commercial development that the Commission ultimately approved.


Newland Communities (who purchased the development from Terrabrook late last year) is now proposing a radical change to the retail and commercial areas of the Town Center. Under this proposal, the retail and commercial establishments to be located along Main Street and the Town Square will be replaced with four-story condominium buildings and other multi-family residential units, thus increasing the residential density of what is already a high-density development. The retail and office square footage has been reduced by 53.2% of the approved square footage and the proposed plan consists of a huge square parking lot bordered by a 58,800-square foot grocery superstore (reportedly Giant) with retail establishments adjoining on each side, a proposed drive-thru bank, one freestanding restaurant and a combination office/retail building located along the south side of the parking lot.

Although its configuration is in the shape of a square, Newland Communities' proposed change is the very antithesis of the "Town Square" concept that is a defining characteristic of neo-traditional communities, and that was at the heart of the Clarksburg Town Center plan that the Board approved. It simply replaces the pedestrian-friendly, community-oriented Town Center concept with a regional strip mall, but with one important difference—Newland Communities' proposed regional strip mall will be located in the heart of a high-density residential community. Indeed, one of the two principal thoroughfares for automobile ingress to and egress from the shopping center will be through and/or adjacent to the Town Square, departing even further from the pedestrian-friendly approach that both the Master and Project Plans define as the main characteristic of Clarksburg Town Center.

As you can well imagine, Newland Communities' proposal is inconsistent with the Planning Board's Master Plan and subsequent Project Plan and is not reflective of the community marketed by the builders of CTC nor is it in keeping with the concept that was solicited at the Visitor's Center when my neighbors and I were making our decisions to purchase homes in Clarksburg Town Center. Many others in the vicinity of CTC are opposed to Newland Communities' proposed changes as well. At the July 27, 2004 meeting with Newland Communities to discuss their proposal, the room was filled to capacity with concerned Clarksburg residents from the Town Center and from the general community, while additional concerned residents stood in the hall. The following week, a meeting held by residents of CTC regarding the same issue attracted over 100 residents and the CTC Advisory Committee was established to address these issues. The Clarksburg Civic Association, which has been instrumental in the planning and implementation process for Clarksburg Town Center for over a decade is also opposed to Newland Communities' deviation from the Project and Master Plans.

Based on these issues, we respectfully request that the Board not approve Newland Communities' proposed site plan, and require Newland Communities to abide by the original terms of the Project Plan. We would ask that the Board not take any action on the proposed site plan, requests for amendments, or requests for zoning variances pertaining to a reduction in the RDT Zones until it has studied the proposal thoroughly and received the input of the residents of the Clarksburg Town Center, the Clarksburg Civic Association and all other interested parties. Thank you for your consideration.

Sincerely,


Kimberly A. Shiley
Co-chair, CTC Advisory Committee


Carol L. Smith
Co-chair, CTC Advisory Committee

cc: Sue Edwards, Team Leader I270 Corridor Area, M-NCPPC
John Carter, Chief, Community Based Planning Division, M-NCPPC
Wynn Withans, Development Review, Planning Department, M-NCPPC
Clarksburg Civic Association
Clarksburg Historical Society
Montgomery County Historical Society
Doug Duncan, County Executive, Montgomery County
Kathy Matthews, Director of Upcounty Regional Services
Nancy Hislop, Assistant Director of Upcounty Regional Services
Mike Knapp, County Council, Montgomery County
Brian Long, Aide to Council Member Mike Knapp
Kimberly Ambrose, Vice President of Operations, Newland Communities
Taylor Chess, Vice President Investments, Regency Centers
Susan Singer-Bart, The Gazette

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

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January 25, 2004

The Honorable Derick Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Subject: Building Heights in Clarksburg Town Center
Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Mr. Berlage:

We are writing to you in response to the letter we received from Rose Krasnow relative to height violations within Clarksburg Town Center development. The Clarksburg Town Center Advisory Committee (CTCAC) has reviewed the letter and is astounded by the determination of the Staff on this issue.

The CTCAC, and the entire Clarksburg community, had placed its faith in M-NCPPC, expecting M-NCPPC to faithfully serve as guardians of the Master Plan intent and to ensure adherence to the Board-approved Project Plan. Unfortunately, we find not only that the M-NCPPC Staff has been grossly negligent in the Site Plan review process, but, based on the subsequent Staff determination regarding the height violations, has fallen abysmally short of serving the citizens of Clarksburg. Therefore, we respectfully request a full Board hearing on this issue.

For your record, we have attached a copy of Rose's letter with our specific response to each point. We have also attached our document reference table highlighting supporting detail for our case and position on the matter.

We would like the Board to consider this letter as an issuance of a formal complaint regarding height violations within Clarksburg Town Center development. Based on the provisions of Zoning Ordinance 59-D-3.6, we would also ask the Board to exercise its right to issue a stop work order pursuant to Site Plans previously approved for buildings not yet built, but also having the potential to exceed the height guidelines as defined in the Board-approved Project Plan Findings. Without such action on the Board's part, we fear that development of other buildings will proceed and the community will have no recourse.

Please respond to us with the earliest possible date and time for scheduling of a full Board hearing on this issue. In view of the pending development of other buildings in question, we believe action must be taken immediately. Scheduling of a hearing date prior to February 10th will be greatly appreciated.

Sincerely,

Amy Presley, Kim Shiley, Carol Smith, CTCAC Co-Chairs,
on behalf of the CTCAC